

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 1, 1999 at 10:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Ric Holden (R)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 243, SB 258, 1/30/1999
Executive Action: SB 232, SB 236, SB 257

HEARING ON SB 243

Sponsor: SEN. FRED THOMAS, SD 31, Stevensville

Proponents: John Larson, District Judge from Missoula

Opponents: None

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, introduced SB 243 which addresses a 1997 decision of the Montana Supreme Court which held the original 1995 Extended Juvenile Jurisdiction Act violated equal protection. A copy of the decision was provided, **EXHIBIT(jus25a01)**. The legislature first amended the Extended Juvenile Jurisdiction Act in 1997 with SB 99. This legislation also amends Section 41-5-208 which has not been ruled upon by the Montana Supreme Court. Current law provides for post adjudication transfer of supervision over certain youths between the ages of 18 and 21 from Youth Court to District Court. This also includes supervision over certain youths from Juvenile Probation Services to Adult Probation Services. The Extended Juvenile Jurisdiction Act incorporates a longer sentence, up to a maximum that could be imposed on an adult. The longer sentence is to encourage the youth to perform the judgment and end up with only a juvenile record. The Supreme Court opinion holds that a juvenile under the original Extended Jurisdiction Act could not receive a longer sentence than an adult because of his age. This legislation would limit the maximum sentence to a period no longer than the maximum adult sentence.

{Tape : 1; Side : A; Approx. Time Counter : 10.07}

Proponents' Testimony:

John Larson, Missoula District Court Judge, explained that the 1997 amendments dealt with issues of due process, jurisdiction, and double jeopardy. Those issues were not the subject of the 1997 Supreme Court decision. Six members of the Montana Supreme Court decided this case on equal protection grounds and stated that due to the rights accorded juveniles in Section 2, Article XV, the total number of years that a juvenile could be subject to this act needed to be limited to the same maximum set for an adult. By looking at the changes also made in the Youth Court Act in 1995, the Supreme Court reasoned that the expansion of the Act which provided accountability and punishment provided that the gap between the juvenile system and the adult system was so narrow that for all practical purposes the number of years spent in the juvenile system should be counted followed by adding on the number of years in the adult system. Last session SB 54 dealt with juveniles at the very beginning stages of the process. There is a gap between the juveniles at the beginning of the system and those already transferred into the adult system.

When the Extended Jurisdiction Act was first enacted in 1995, there was a very difficult transfer provision which meant that sometimes juveniles would stay in juvenile detention for up to a

year pending that transfer. In 1997, the Juvenile Justice Commission made that transfer into adult court easier. All that needs to be done for certain offenses is that a motion for leave to file needs to be filed with the judge. The judge will sign off on the motion if there is probable cause that the offense has been committed. Several very serious offenses are listed. The judge has discretion not to transfer a juvenile into the adult system. Extended jurisdiction keeps the juvenile in the juvenile system and the sentence that is imposed is a combination of a juvenile disposition and the maximum period that an adult could be sentenced under the underlying statute. The adult portion of that sentence is stayed to encourage the juvenile to perform the judgment.

This statute was initially adopted in Minnesota in 1995. Minnesota has been tracking their adult certifications and extended jurisdiction, **EXHIBIT(jus25a02)**. The data shows that this is filling the gap between juveniles who commit serious offenses and are transferred into the adult system and juveniles who are not. This gives the juvenile an extra chance. It also gives the judge and the probation officers an extra lever to encourage the juveniles to perform that judgment.

In 1997 the placement authority for juveniles at Pine Hills was changed from age 19 to age 18. The tools left to a juvenile probation officer after age 18 are very limited. The extended jurisdiction component gives the additional incentive to fully perform the juvenile judgment. Section 41-5-208 was also a part of SB 54 and is still being used. **Judge Larson** added that he currently has two young men who are almost 18 and have admitted that they severely beat up a correctional officer at Pine Hills as they were attempting to escape. They were charged as juveniles and have subsequently turned 18. They did not commit any of the transferable offenses listed under Section 41-5-206. There will be a juvenile judgment entered for them. How will they be encouraged to follow through on that judgment? The probation officer has very few tools. Section 41-5-208 makes available the community corrections programs of the adult system.

The key to the juvenile system has always been to fashion more individual solutions for the young people. This legislation provides for this to occur by either the Youth Court or the District Court. The data from Minnesota shows that this is working and very few of the sentences are actually revoked and go into the adult system. The same violent offenses that were excluded in SB 54 are excluded in SB 243. This is not applied to offenses of homicide or a serious violent crime.

Opponents' Testimony: None.

{Tape : 1; Side : A; Approx. Time Counter : 10.18}

Questions from Committee Members and Responses:

SEN. BARTLETT asked why the maximum age for a juvenile to be at Pine Hills was reduced from 19 to 18. **Judge Larson** explained that the Department of Corrections requested that the maximum age of commitment to Pine Hills and Riverside be reduced. He personally opposed that request, but the change became law.

SEN. BARTLETT requested clarification of Justice Trieweiler's Specially Concurring Opinion that the act violates the prohibition against double jeopardy. **Judge Larson** maintained that Justice Trieweiler was the only Justice to use that analysis. He interpreted Montana's double jeopardy clause to be broader than the federal clause. By addressing the sections dealing with equal protection and the rights of juveniles under 18, which six members concurred in, he believes that he has addressed the primary concerns of the Court.

SEN. BARTLETT contended that the Supreme Court identified physical liberty as a fundamental right which means that this statute, even revised, will be subject to a strict scrutiny test. It does proffer the potential for a juvenile to lose their physical liberty by being placed in a pre-release center, intensive supervision, or the boot camp. The Article on rights of minors was designed solely to enhance protections for minors. The act that was being struck down enhanced punitive measures rather than protections for minors. The testimony given this morning addressed a very narrow section of the statute and the court decision to which it applied.

Judge Larson did not share **SEN. BARTLETT'S** reading of the opinion in that the Court applied a middle tier analysis to the prior statute and should apply a middle tier analysis to the amended statute. The pre-release language was not part of the opinion. Section 41-5-208 remains a juvenile sentence throughout and thus provides an enhancement due to the fact that if a juvenile sentence is successfully completed, a juvenile adjudication is much more beneficial than an adult adjudication. The juvenile continues to be able to perform the juvenile judgment even as long as age 25, maintain that juvenile judgment and have it sealed rather than go into an adult adjudication. The limitation on the sentence addresses both sections of the Constitution that were found unconstitutional by the Montana Supreme Court.

{Tape : 1; Side : A; Approx. Time Counter : 10.25}

Closing by Sponsor:

SEN. THOMAS closed on SB 243.

HEARING ON SB 258

Sponsor: SEN. DUANE GRIMES, SD 20, Clancy

Proponents: Judy Wang, Assistant Missoula City Attorney
 Tootie Welker, Sanders County Coalition for
 Families
 Kathy Sewell, Montana Coalition Against Domestic
 and Sexual Violence
 Rebecca Moog, Montana Women's Lobby

Opponents: None

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, Clancy, introduced SB 258. He conveyed that the domestic abuse shelters around the state provide a safety net for families. Oftentimes mothers with their children in hand seek refuge in domestic abuse shelters. The other part of this effort is legislation that provides that sexual gratification does not need to be present in order to charge someone with a crime. It is unspeakably sad that this legislation needs to be considered. Approximately 8,000 families have been helped by domestic abuse shelters. It is important to make sure that temporary orders of protection do not lapse. In these circumstances when one is faced with an extremely hostile and dangerous situation, the temporary orders should not lapse because of the system because this leaves people hanging out on a limb.

{Tape : 1; Side : A; Approx. Time Counter : 10.32}

Proponents' Testimony:

Judy Wang, Assistant Missoula City Attorney, reported that one of the laws that the legislature has enacted to help victims of domestic violence is to give victims an order of protection so that they can have an order from a judge that states that the offender must stay away. If the offender cannot have contact with the victim, less crimes will occur.

In 1997, the Montana Supreme Court ruled in State v. Asmundson, ___ Mont. ___, 940 P.2d 104 (1997), that all orders of protection must go to hearing within 20 days. The effect of the ruling is if a victim receives an order of protection seeking refuge from a violent offender, the matter must go to hearing. If the hearing cannot be conducted within 20 days, the order

disappears. This legislation asks that the law be amended so that any party, for good cause, can have an order of protection hearing postponed. She had a victim who was very pregnant in a high-risk pregnancy who asked the court for an order of protection against her partner. Because she was at risk of losing her child if she went through a risky hearing, the hearing was postponed. Meanwhile she fled to a shelter and he contacted her at the shelter. The contact was after the 20 days had passed but before the matter went to hearing. The matter was heard and the order was continued. The offender was charged criminally with violating the order of protection. This went to trial and the jurors decided he was guilty but because the hearing had been postponed because she was more concerned about her baby's safety than her own, the charges were dismissed because a hearing hadn't been conducted within 20 days of when the order was originally issued.

This legislation clarifies what court will conduct an order of protection hearing. Courts of limited jurisdiction and district courts both have jurisdiction over these orders.

She further commented that the amendment is at the very beginning of the bill. They are asking that the language be restored to its original statutory language. Written testimony of Judy Wang - **EXHIBIT(jus25a03)**.

Tootie Welker, Sanders County Coalition for Families, presented her written testimony, **EXHIBIT(jus25a04)**.

Kathy Sewell, Montana Coalition Against Domestic and Sexual Violence, conveyed that last year there were over 10,000 calls to their hotlines and they served between 6,000 and 8,000 women directly. The risk of death for battered women increases a hundred fold when they separate from their husband. One of the reasons that battered women stay in a bad relationship is that they know that they are in fear of their lives if they actually leave. An order for protection is very important.

Rebecca Moog, Montana Women's Lobby, rose in support of SB 258.

Additional exhibits: Letter - Great Falls Municipal Court, **EXHIBIT(jus25a05)** and Letter - Warren L. Little, **EXHIBIT(jus25a06)**.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 10.41}

Questions from Committee Members and Responses:

SEN. HALLIGAN referred to the language on page 2, line 22, and remarked that a parenting action could be filed in a situation where the parents are not married. **Ms. Wang** remarked that this language was at the request of a judge from a limited jurisdiction court. Most of the time in an order of protection, a parenting plan isn't at issue. There are provisions for restrictions with contact with children. A parenting plan, where it applied and if contact with children was an issue, would be a good amendment to the bill.

SEN. HALLIGAN explained that he had a case where the parents are not married and there is abuse involved. He agreed to work on amending the language.

SEN. DOHERTY referred to page 2, line 24, where either party would be able to appeal or remove the matter to the district court prior to or after the hearing. He added that recent legislation dealt with the right of jury trial in courts of limited jurisdiction. If either party could remove the matter to the district court prior to the hearing and this is not done prior to the hearing, he questioned what appeal rights would be available after the hearing.

Ms. Wang stated they would be entitled to an appeal to district court after the hearing if it is not appealed ahead of time. The appeal rights from a court of limited jurisdiction to district court in an order of protection are extremely broad.

{Tape : 1; Side : B; Approx. Time Counter : 10.44}

Closing by Sponsor:

SEN. GRIMES summarized that SB 259 continues to fund domestic violent shelters, SB 257 ensures that sexual gratification does not need to be present in order to charge someone with a sex crime and SB 258 addresses temporary protective orders and clarifies the necessary jurisdiction in these case. This trio of bills is extremely critical for the safety of hundreds of women across this state. Women do not need to stay in abusive situations. They are worthy of respect and every God given right that everyone else has, including their spouses. There is a safety net for them if they decide to make a life for themselves and their children.

EXECUTIVE ACTION ON SB 16

CHAIRMAN GROSFIELD reported that **SEN. GRIMES** will serve as Chairman of the Y2K Subcommittee. **SEN. HALLIGAN** and **SEN. HOLDEN**

will also serve on the Subcommittee. He encouraged other Committee members to attend the meetings.

{Tape : 1; Side : B; Approx. Time Counter : 10.47}

EXECUTIVE ACTION ON SB 232

Ms. Lane explained that the amendments SB023201.av1, **EXHIBIT (jus25a07)**, were at the request of **Bob Pyfer, Montana Credit Union League**.

Motion/Vote: **SEN. BARTLETT** moved that **SB 232 BE AMENDED**. Motion carried unanimously.

Motion: **SEN. MCNUTT** moved that **SB 232 DO PASS AS AMENDED**.

Discussion:

SEN. BARTLETT stated that one of the exceptions to what would be considered an action is found on page 2, line 7, (e) which talks about an action for the exercise of a power of sale or foreclosure by advertisement and sale, both of which relate to real property. She asked for further clarification of the action involved in (e). **George Bennett, Montana Bankers Association**, explained that this referred to private sales. Under the UCC, collateral can be sold at a private sale as long as it is commercially reasonable. Under the Small Tract Financing Act, the trustee can sell at a private sale but the creditor then loses the right to obtain a deficiency judgment. Those have been determined either by court action or by the determination in other states not to impinge on the right to collect a debt through a foreclosure action.

SEN. BARTLETT stated that it was her understanding that the power of sale, 71-1-223, referred to a mortgage rather than a UCC action. **Mr. Bennett** clarified that if the borrower agrees to grant to the lender a power of sale under which the lender then can conduct a private sale, that private sale is then conducted and the borrower is protected because that sale must be reasonable and there is no right of deficiency. The creditor receives only what is realized from the sale of the collateral and can no longer pursue the debtor for any deficiency that results. He remarked that the examples given by the bankers during the hearing did not directly relate to the legislation.

Vote: Motion carried unanimously - 7-0.

EXECUTIVE ACTION ON SB 236

Motion: SEN. DOHERTY moved that SB 236 BE AMENDED - SB0023602.av1, **EXHIBIT**(jus25a08).

Discussion:

SEN. DOHERTY remarked that there was testimony concerning the definition section. The amendments would keep the definition of criminal incitement to mean the advocacy of crime, malicious damage, or injury to property or violence. Lines 24 and 25 refer to criminal actions. The specificity requested by **Scott Crichton, American Civil Liberties Union**, which related to specific crimes, has been inserted. The advocacy and the crime need to be the same. "Imminent" was redefined to mean "immediate, impending, on the verge of happening".

Vote: Motion carried unanimously - 8-0.

Motion: SEN. DOHERTY moved that SB 236 DO PASS AS AMENDED.

Discussion:

SEN. DOHERTY remarked that this language is a rewrite of an unconstitutionally vague statute. This will clarify current law.

CHAIRMAN GROSFIELD reported that additional amendments were prepared for SEN. HOLDEN.

SEN. DOHERTY claimed that the amendments were not within the title of bill. The bill revises the offense of criminal syndicalism in section 236. He added that **SEN. HOLDEN'S** amendments would eliminate the offense of criminal syndicalism.

Vote: Motion carried 7-1 with SEN. GRIMES voting no.

EXECUTIVE ACTION ON SB 257

CHAIRMAN GROSFIELD remarked that there is some concern about unintended consequences due to the broad terminology in the legislation. **Ms. Wang** maintained that the criminal law is unique in the way it is structured in that it includes definitions. All of the definitions plug into criminal law, which call for the offender to act knowingly or purposely. A person acts knowingly when they are aware of their conduct. A person acts purposely when they have a conscious object to engage in that conduct. A peace officer who has the facts at hand and a prosecutor who

evaluates all the facts need to use a lot of wisdom and discretion to make their decisions.

SEN. BARTLETT questioned why language wasn't stricken which pertains to the only purpose of the act being to arouse or gratify a sexual desire or response. **Ms. Wang** clarified that historically these crimes have been looked at as sexual crimes. It is possible that a sex crime could happen when there is sexual contact without consent or there is sexual intercourse without consent and they are not necessarily trying to humiliate or degrade. There are some crimes where this would still apply.

SEN. BARTLETT remarked that she has been involved with these issues for 25 years. She finds it gratifying to hear from law enforcement and prosecutors that these kinds of statutes are necessary and that these crimes come out of an intense desire to control, humiliate or have power over another human being. The progress that has been made in the state is worth noting. She recognized the courage of women who have had these experiences to come to public settings such as the legislature and speak publicly about very personal and very difficult experiences that they have had.

CHAIRMAN GROSFIELD asked for clarification of lifetime registration for sex offenders in the indecent exposure statutes.

SEN. GRIMES remarked that in the case of "mooning" by a highschool student, the intent was humor. However, if this involved an adult on a playground full of children, it may be considered indecent exposure.

SEN. BARTLETT added that the indecent exposure statute was found on page 11 of the bill and registration would take effect for a third or subsequent conviction. She added that it is her understanding that repeated indecent exposure may involve an individual who was on the path toward more predatory and physically injuring types of sexual offenses.

SEN. DOHERTY emphasized that it is important for the record to show that the Committee understands the difference between the beginning of a march down a predatory path and a "prank". They would hope that the prosecutors understand that difference as well. The Committee would be very concerned if an overzealous prosecutor took up that cause.

SEN. GRIMES agreed and added that if a young person does something on a playground, there are times when counselors become overly concerned. The seriousness of this occurring in the adult community is why a bill like this is needed.

Motion/Vote: SEN. GRIMES moved that SB 257 DO PASS. Motion carried unanimously.

CHAIRMAN GROSFIELD stated that someone looking for the legislative history on this bill would not necessarily look to the testimony on SB 258. He repeated that it is too bad that we are in the position of needing to bring this legislation forward. This should have been addressed a long time ago. This is not about sexual gratification or desire, it is about power and violence. This is a very serious issue.

Vote: Motion carried unanimously - 8-0.

SEN. BARTLETT explained that she has requested a study resolution which would address the sentencing statutes, sentencing data information collection and management, and issues related to sentencing.

CHAIRMAN GROSFIELD requested that the draft be more specific and more aggressive. We are unable to obtain information from district courts and the state regarding the status of sentencing. Most of the information which has been prepared is shelf art with little coordination. This information would not only be useful to the judiciary but also the judiciary committees in the legislature.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus25aad)